



Ensuring Sharia Compliance in Waqf on Insurance Benefits and Waqf on Investment Benefits: *Sadd Al-Zari'ah's* Perspective

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Abstract. Waqf governance in sharia insurance products must consider various aspects. From the perspective of saddu al-zari'ah, it can be studied the integrity of the product (intention, purpose, process, and maslahat) because if one of them is indicated to be defective, it is considered to violate the principle of goodness. This research is literature research with descriptive-analytical methods. This study concluded that the implementation of saddu dzari'ah is very concerned with applying waqf insurance and investment benefits, seen from several factors (1) The appointed heirs (as beneficiaries) must pledge (wa'd mulzam). The promise is not included in the pillars that can cancel the insurance benefit waqf contract but needs to be implemented so that the heir's commitment remains awake and have the force of law. (2) The maximum limit of the proportion of waqf may not be set 45%, but this will harm one of the parties (3) Shari'a insurance companies (with the agreement of insurance participants) may take profits from investment activities periodically and be allocated directly for waqf. However, to fulfil the rights of the heirs, the investment benefits are accumulated, and the heirs still get a share after deducting 1/3 part of the total investment benefits.

Keywords: waqf · takaful · waqf on investement benefits · waqf on insurance benefits · saddu al-dzari'ah

1 Introduction

Cash waqf is one of the most flexible and easy waqf containers (Zahara 2020). However, since the Indonesian Ulema Council (MUI) issued a fatwa on its legality, many models and schemes have emerged that the receipt and management of cash waqf need to be regulated. Initially, cash waqf should only be received by Shari'a Financial Institutions receiving Waqf Money (LKS-PWU). However, after the emergence of DSN MUI fatwa No. 106 / DSN-MUI / X / 2016, shari'a insurance can also act as a recipient of waqf money (although not directly) with some provisions. The Fatwa arose at the request of Sun Life Financial Syariah, which requires a sharia law ruling regarding the shari'a insurance investment benefit program for waqf. Previously, the Al-Azhar Waqf Institute also required provisions on the shari'a aspects of the waqf product of the will of the

insurance policy. In response to this request, MUI designed legal provisions that must be carried out by shari'a insurance companies that want to add waqf as a feature of their products.

The integration of waqf and insurance certainly brings various consequences because both have different characteristics, as it is known that insurance is an activity that must be based on the principle of insurable interest. This principle requires that there are risks in the future that become covered in the procurement of insurance contracts. Meanwhile, the mixing between waqf and insurance will create an opportunity where the insured's participation in insurance is based on his pure desire to waqf. In this case, Mutia (2020) explained that waqf activities in sharia insurance, which makes waqf the main reason for making an insurance agreement, will violate the principle of insurable interest. That is, the insured must still be insured for an upcoming risk, while the intention of waqf is only a complement to the activity.

Furthermore, in insurance activities, premiums paid every month may be stopped due to participants' financial difficulties, so the policy promised at the beginning of the contract is not necessarily owned later. In this case, Sulistiani (2018) criticized the insurance waqf agreement and explained that the ownership of the waqf object in the insurance waqf has the opportunity to bring polemics because there is still a possibility of the waqf contract being cancelled if the insured has difficulty paying premiums. Therefore, the waqf management in shari'a insurance products must consider various aspects where the principle of waqf and the principle of shari'a insurance must be carried out simultaneously.

Seeing the above phenomenon, Islam as a legal system presents guidelines and guidance that can be a solution. If you look further, the realm of Islamic intellectual treasures is known as the principle of Saddu al-zari'ah. This principle is understood as one of the methods of establishing laws that prioritize maslahat (goodness) by closing all things that have the potential to bring madharat (damage). Based on the perspective of saddu al-zari'ah, this contract can be seen starting from the intention, purpose, process, and impact, has it fulfilled the provisions of sharia or vice versa. Therefore, Waqf insurance benefits and waqf investment benefits in shari'a life insurance must certainly protect the rights of many parties, including insurance participants as parties who want to carry out waqf, heirs appointed as parties who later carry out the waqf pledge, waqf institutions as nazir/mutawalli/trustees, and insurance companies as recipients of cash waqf.

Some of the previous studies related to sharia life insurance waqf have been carried out, such as Alam (2020), which examines the implementation of the waqf feature on the AlliSyta Protection Plus Unit link. The researcher concluded that implementing the waqf feature followed the DSN-MUI Fatwa because it met the elements in the Fatwa. Hakim and Aisyah (2020) also examined the development of shari'a insurance waqf after the issuance of DSN-MUI Fatwa No. 106 of 2016. The conclusion of the study is that the Fatwa that the DSN-MUI has issued has not been able to provide maximum thrust for the development of shari'a insurance waqf due to the segmentation of insurance waqf limited sharia and the mindset of people who have not been able to move from the conventional waqf pattern towards a more productive waqf. Furthermore, (2018) (2018) analyzed the implementation of the waqf will consist of the insurance policy at the Al-Azhar Jakarta waqf institution, which was not fully by the DSN-MUI Fatwa.

These studies have a different object of study because the researcher will examine the suitability of sharia in the waqf of insurance benefits and the waqf of investment benefits reviewed with saddu al-dzari'ah approaches. The viewpoint used in saddu al-dzari'ah is a preventive point of view. A product of an Islamic financial institution may bring a lot of maslahat (goodness). Still, if a good process and consequences do not accompany it, it will automatically be rejected because Shari'a prioritizes holistic benefit. Therefore, this discussion is important to carry out.

2 Method

This research is literature research with a descriptive-analytical method to see the holistic suitability of sharia in waqf products for insurance benefits and investment waqf in Indonesia from the view of saddu al-dzari'ah. The method provides primary data from scientific articles on previous research and Islamic jurisprudence books. Meanwhile, secondary data sources come from articles on the internet per the research theme.

3 Research and Discussion

3.1 Saddu Al-Dzari'ah in Islamic Jurisprudence

One of the basic principles of Shari'a is to eliminate narrowness (2:185, 2:286, 4:28, 5:101). It confirms that the rules in Islam are very concerned about the human condition and are in line with their benefit. One of the methods in determining Islamic law is saddu al-dzari'ah. Suppose another method establishes a law based on its intentions and objectives. In that case, saddu al-dzari'ah will focus on a wash (intermediary activity) so that an intention becomes perfect (Khallaf 2005). The concept of Saddu Al-Dzari'ah is implicit in QS.6:108, which contains the prohibition of berating offerings other than Allah because it will result in retribution for insults to Allah. Another verse, QS 24:31 it is mentioned the prohibition against women from laying their feet when walking so that others can know the jewels hidden from them.

In language, saddu al-dzari'ah means to block the path that leads to something. The scholars define it as "preventing something that becomes a path of damage, or closing a road that can convey a person to damage". If a good deed can cause damage, then the deed must be prevented or prohibited (Sodiqin 2012). Saddu al-dzari'ah can be used for istidlal (taking postulates), although it is disputed. It shows that although the shari'a does not stipulate the law of an act, it is clear if the act leads to an act that is prohibited. Therefore, it can be a postulate (hint) that the law of wasilah (intermediary) should also not be implemented (Munawaroh 2018).

للسائل كحكم المقاصد

"For the will (intermediary) is punished as the law applies to what is intended."

Abu Zahra in Hasirudin (2020) divides saddu al-dzari'ah into four parts, namely (1) everything that qath'i (definitely) leads to the forbidden thing, then it is forbidden, (2) deeds that are less likely to bring mafsadah (damage) which is generally harmless, then it must be considered whether the practicality is greater than the madharat (danger), (3) the deeds that are strongly thought to be (ghalabat ad-dzan) will bring mafsadah (damage) then it is prohibited, (4) acts that are likely to be mafsadah (damage) under ghalabat ad-dzan (the probability of damage is still large) then it is also prohibited.

The whole concept of saddu al-dzari'ah is based on the idea of preventing evil before the damage is realized. Therefore, it is not always necessary that the result is obtained. It is more of an objective expectation that a means tends to lead to mafsadah and violation of the law. Saddu al-dzari'ah does not mean changing from halal to haram. Whenever a legitimate means may cause an unlawful end, the means themselves become unlawful. The application of saddu al-dzari'ah also allows haram to turn into halal or mubah if it presents greater damage. In addition, smaller damage can also be tolerated to prevent something greater harm. For example, giving money to the enemy is against the law because it adds to the opponent's strength. But this is permissible because, in turn, it will increase the strength of the Muslim army. Scholars generally argue that giving bribes is permissible if it is the only way to be able to survive oppression and the victim cannot defend themselves.

Quraishi & (2000) (2000) further explains that the Clerics have warned regarding the use of the saddu al-dzari'ah principle that its excessive use can make something legitimate (allowed) and even mandub (commendable) become unlawful. It is strongly discouraging. An example is the ethics of an honest person who does not want to take care of orphans and manage his property because he avoids the possibility of sin and the mixing of property. The harm that may be caused by it will be greater than if he received it. Likewise, concerning the honest person's rejection of the witness for fear of being involved in lies, the mafsadah (damage) that arises will be greater and must be avoided.

The provisions of saddu al-dzari'ah include (1) Purpose. If the purpose is not allowed, the means are also forbidden; if the purpose is mandatory, then the means are also required (2) Intentions (motives). If the intention is to achieve halal, then the means are also halal (3) The result of an action. If the consequences of an act bring benefits, according to Shari'a, then the means can be done, and vice versa. But, on the other hand, if the consequences bring bad even with a good purpose, then the means that lead to the ugliness are also not allowed (Muaidi 2016).

3.2 Hybrid Sharia Life Insurance Contract with Waqf

Sharia life insurance is one of the products in shari'a insurance companies. Shari'a insurance (takaful) is a cooperation between two parties that provides mutual financial security against unexpected material risks. In the takaful contract, there are two parties involved, namely the participant (the insured), who must pay a certain amount of contribution money (premium), and the takaful operator, namely the shari'a insurance company who receives and manages the contribution money (premium). Both parties agree that the takaful operator has a legal obligation to provide financial security to participants against losses or damages that arise within the agreed policy period (Billah

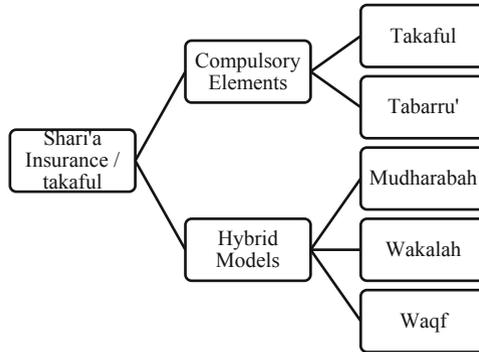


Fig. 1. Hybrid Sharia Life Insurance Contract with Waqf

2019). The participants are the owners of capital (shahibul mal), and the insurance company is the fund manager (mudharib). The profits arising from the management of these funds are distributed to both parties by the provisions promised at the beginning of the contract.

Sharia life insurance has two model mechanisms: the saving mechanism and the non-saving mechanism. The saving mechanism means that participants must pay contributions (premiums) regularly to the insurance company to be allocated into the participant's savings account and tabarru account'. Meanwhile, the non-saving mechanism means that all contribution funds (premiums) paid by participants will be included in tabarru's account only. Tabarru's account is a collection of benevolent funds that participants have intended from the beginning for help and will be given if the participant dies or if the agreement has expired (Ajib 2019). In addition, the mechanism allows for an actual control relationship between shari'a insurance companies and waqf institutions through hybrid contracts as in the Fig. 1 (Manjoo 2020):

The figure illustrates that waqf can be one of the features in shari'a insurance companies with hybrid contracts. Zubaidi (2020) mentioned that the application of waqf in shari'a insurance could be made with three models, namely:

1. Waqf fund model

In implementing the waqf fund model, sharia insurance companies must provide funds used as waqf funds. The funds will later be combined with waqf and tabarru funds from insurance participants. Usually, the contributions paid by participants will be channelled into tabarru and investment accounts. Still, in the waqf fund model, participants' contributions must contain a waqf component of a certain percentage. Furthermore, the waqf funds collected must always be maintained intact and not be used for operations or claims. In this case, the shari'a insurance company acts as nazir/ mutawalli/ trustee.

The waqf fund model insurance management can be done with a savings mechanism that usually applies to the type of family sharia insurance. The waqf fund will be divided into two accounts, tabarru' and savings accounts, provided that (a) The waqf funds in the savings account must not be returned to the participant (wakif)

because the funds have been waived, as well as the investment returns. Participants can determine the mauquf 'alaih (the party who receives the waqf) according to the participant's wishes (b) The waqf fund entered in the tabarru accounts' will be managed and invested first. At the same time, the proceeds from the investment can only be used to help fellow insurance participants (just like the principle in the waqf family). Sharia insurance companies are also entitled to a maximum ujah (fee) of 10 per cent, following the provisions stated in Law Number 41 of 2004 Article 12 about waqf. This fee is a source of inclusion for shari'a insurance companies in the waqf fund model.

2. Insurance benefit waqf model

Based on MUI Fatwa No. 106 of 2016, waqf insurance benefits are several funds sourced from tabarru' funds and handed over to the party who experienced the disaster or the party appointed to receive it. The heir as an insurance beneficiary will later represent the benefits received if he gets insurance coverage from an event. For this waqf to be carried out, the heirs must promise to waive their insurance benefits so that part of the insurance benefits becomes the right of the heirs while the other part has been intended for waqf.

3. Investment benefit waqf model

Waqf investment benefits use several funds derived from participants' investment contributions and returns. Like before, this waqf also requires the will of the participant to the heirs to represent the benefits of their investment.

So far, shari'a insurance is considered only to benefit its participants because the distribution of tabarru funds is intended specifically for insurance participants. However, adding the waqf feature in shari'a insurance means expanding the coverage of benefits that people outside the insurance participants can feel. In addition, adding waqf features can also increase people's needs for shari'a life insurance products because public interest becomes high when economic activities involve spirituality. Moreover, through waqf insurance, people can pay waqf in instalments and consistently throughout their lives. Until now, Indonesia has not provided a place to waqf in instalments like Bangladesh. Therefore, the container is indirectly formed by utilizing the waqf feature in life insurance. In addition, this activity can also help the sustainability of the sharia insurance business.

The implementation of a hybrid contract between sharia insurance and waqf in Indonesia is regulated in DSN-MUI Fatwa No. 106/DSN-MUI/X/2016. Provisions relating to the waqf of insurance benefits contained in the Fatwa include (1) The party appointed to receive the insurance benefit pledges (wa'd mulzim) to represent insurance benefits, (2) Insurance benefits may be waived at most 45% of the total insurance benefits, (3) All prospective insurance beneficiaries or their successors must be expressing agreement and agreement, (4) The waqf pledge is executed after the insurance benefit has in principle become the right of the appointed party or its successor. And concerning waqf, investment benefits have several provisions, namely (1) Insurance participants can waive investment benefits, and (2) the level of the number of investment benefits that can be represented at most is 1/3 of the total wealth unless agreed upon by the heirs. While the provisions relating to ujah (fee) are (1) The first year's Ujah is at most 45% of the regular contribution, and (2)

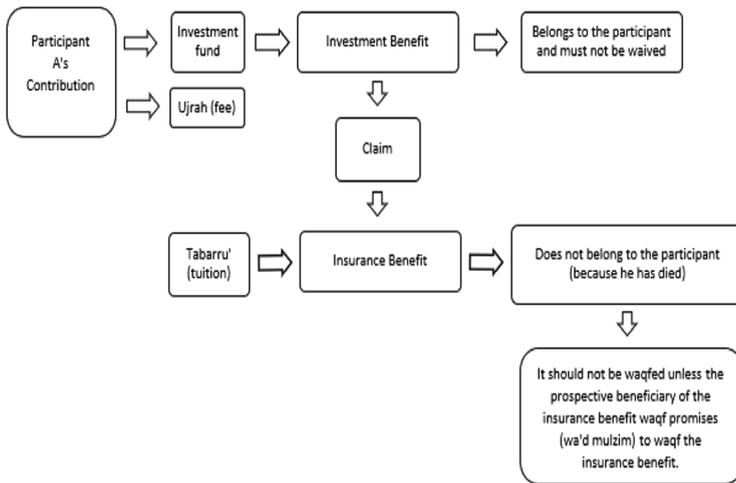


Fig. 2. Waqf contract scheme insurance benefits and waqf investment benefits

The accumulation of ujrah (fee) the following year is at most a lot of 50% of regular contributions.

The Fatwa does not specifically mention the type of sharia life insurance that can be allocated for waqf. However, as is known, life insurance means that all types of sharia life insurance can be combined with waqf contracts.

Waqf is usually handed over instantly to the nazir or waqf institution when the waqif intends to do so. However, in the waqf of insurance and investment benefits, the desire to waqf must be suspended until a certain time limit, when the insurance participant is already entitled to the benefits insurance and its investments. Furthermore, insurance waqf participants can determine the designation of the waqf. In this process, both participants and heirs must commit that the parties will donate funds and submit their management to the Waqf Institution in the future. Further explanation of the waqf agreement for insurance benefits and waqf of investment benefits can be seen in the scheme below (Sula 2004) (Fig. 2):

Through the above scheme, it can be clearly illustrated that based on the MUI fatwa, the maximum that can be promised in the waqf of insurance benefits of 45% is caused by the mixing of insurance contracts that requires that the amount of percentage related to the insured event or risk must exceed the nominal percentage that can be represented. Furthermore, inheritance law is not enforced in Islam because the participants have not perfectly owned the property in the waqf of insurance benefits. Therefore, the Islamic inheritance law (will law) in the distribution of waqf investment benefits must be applied, a maximum of 1/3 of all investment benefits obtained.

3.3 Ensuring Shariah Compliance for Waqf in Insurance Benefits and Waqf in Investment Benefits: Sadd Al- Zari'ah Perspective

In economic activities, Islam is based on the principles of shari'a that must be upheld, namely the principle of prohibiting eating other people's property unnaturally (2:188), the principle of ridho bi ridho or mutual willing without coercion (4:29), the principle of eliminating exploitation and harming others (2:279), the principle of not recognizing the existence of usury (30:39, 4:161, 3:130, 2:275-278), and the principle of prohibition of performing tadlis (fraud). If such principles can be met and no specific postulates prohibit them, then an economic activity is legitimate. It follows the rule of "Al-Ashlu fil Mu'amalah al-Ibahah" which opens a wide range of dynamic economic activity related to the progress and development of the times.

Based on this principle, waqf of insurance and investment benefits can continue to be carried out because there are no restrictions on Shari'a that are violated. However, the combination of waqf and insurance transactions impacts the contracts contained therein because they have different bases. For example, waqf is a philanthropic activity where the willingness is the basis, while insurance is a coverage activity often associated with gains and losses. Therefore, insurance companies that can issue waqf product features are only shari'a insurance companies so that the relationship that occurs is no longer a relationship related to profit and loss but turns into an act of ta'awun (helping each other). It also eliminates the elements of gharar, maysir, and usury that were previously still attached to conventional insurance activities.

The hybrid contract between shari'ah insurance and waqf at least poses several risks, namely (1) a shari'a insurance card becomes void because the participant can no longer afford to pay the premium, so the policy is not obtained, and the intention of waqf is dashed (2) the heirs as the policy recipient does not have the same intention to waqf (3) the absence of a desire for insurance, only the desire to waqf gradually with the use of insurance products, and (4) the non-fulfilment of the principle of milku tam (perfect ownership) on the object of waqf.

Although there are some risks to worry about, some advantages of waqf insurance should also be considered. These advantages are (1) increasing waqf fundraising, (2) educating the public about waqf flexibility, (3) having a good effect on the sustainability of the shari'a insurance business, (4) expanding the distribution of benefits of shari'a insurance products, (5) increasing the sensitivity of individuals to prepare jariyah charity (6) financial and spiritual provisions for heirs.

When viewed from the quality of mafsadah saddu dzari'ah, these risks fall into the category of actions that contain benefit (kindness) and make it possible to bring in mafsadah (damage) if not handled properly. But the risk has not met the conditions that make the act should be banned. Seeing the many potential goods in the waqf of insurance benefits and investment benefits, then the principle of saddu al-dzari'ah should not be used excessively. In other words, it should not raise concerns about potential risks by abandoning all its good.

Participation in insurance waqf products is a maslahat hajjiyat (tertiary goodness) that complements human life. This hajjiyat maslahat is often placed integrally (separately) from the maslahah dharuriyah (primary goodness) and maslahah tahsiniyah (secondary goodness). If the hajjiyah maslahah can be carried out, then the maslahah dharuriyah

(primary goodness) and *maslahah tahsiniyah* (secondary goodness) will also be carried out with better quality. With their wealth, humans can buy necessities such as clothing, shelter, and food (primary goodness). The property can also be used for almsgiving and helping others in need (secondary kindness). Furthermore, with the wealth owned, humans can prepare financial provisions for offspring so that they can leave a strong generation (tertiary goodness).

Therefore, to avoid the potential that is feared to occur, it must be ensured that all parties in good faith carry out the waqf agreement for insurance benefits and waqf for investment benefits up to the end of the agreement. It is crucial because the waqf of shari'a insurance can only be carried out if sharia life insurance participants fulfil the obligation to pay their premiums to the end. Conversely, if the participant cannot fulfil his obligations during the trip, the premium paid can change the status to 'lapse'.

As discussed earlier that the concept of *saddu al-dzari'ah* is based on the idea of preventing before the damage is realized. The implementation of *saddu al-dzari'ah* on the contract can be seen in the Table 1:

Through the table, at least several things can be described, namely (1) There is no purpose in waqf insurance benefits or waqf investment benefits that violate the provisions of Shari'a (2) There is no violation in the intention to carry out waqf insurance benefits and waqf investment benefits (3) Impact of the implementation of waqf insurance benefits and waqf investment benefits bring benefits.

Meanwhile, some of the provisions that must be implemented in the waqf of insurance benefits and the waqf of investment benefits lead to the process that must be carried out by the parties which carry out the contract. This provision is a preemptive effort and application of *saddu al-dzari'ah* when viewed from several factors (1) The object of waqf must already be owned. In the waqf of insurance benefits, the waqf contract is only carried out after the object of the waqf is fully the property of the heirs. Therefore, the appointed heirs (as beneficiaries) must pledge (*wa'd mulzam*). This promise is not included in the pillars that can cancel the waqf contract for insurance benefits but needs to be carried out so that the commitment of the heirs is maintained and has the force of law. (2) The maximum percentage for the total insurance benefits represented is 45%. It is determined so that the percentage of advice related to the event or risk insured must exceed the nominal percentage that can be represented. The maximum limit of the proportion of waqf may not be set, but this will harm one of the parties, namely the shari'a insurance company. Moreover, the basis of the activities in this contract is insurance, so there needs to be a determination of the maximum proportion that can be waived. (3) The maximum amount of investment funds that can be waived following the will law in Islam is 1/3 part of the total investment benefit. Shari'a insurance companies (with the agreement of insurance participants) may take profits from investment activities periodically and be allocated directly for waqf. However, to fulfil the rights of the heirs, the investment benefits are accumulated, and the heirs still get a share after deducting 1/3 part of the total investment benefits.

Table 1. Implementation of Saddu Al-Dzari'ah on Waqf in Insurance Benefits and Waqf in Investment Benefits

Intention	Conditions	Process	Purpose	Result
Waqf insurance benefits	The object of the waqf must already be owned	Handing over waqf funds to the waqf institution after the participant dies and becomes the full property of the appointed heir	Fulfilling the principle of milku tam (perfect ownership) in the submission of waqf objects	Assets that are represented following the provisions of Shari'a
	The maximum percentage for the total insurance benefits waived is 45%	Carry out the waqf contract for insurance benefits following the percentage allowed by the Government	Fulfilling the principle of insurable interest in sharia insurance	The amount percentage related to the insured event or risk must exceed the nominal percentage that can be represented
	Must go through the agreement of the participant and the heirs	There is an agreement at the beginning of the contract that in the future, the insurance benefits will be waived	Maintained commitment of heirs	Fulfillment of participants' desire to waqf
Waqf investment benefits	The maximum amount of funds that can be waived is 1/3 of the total wealth	Must still follow the provisions in Islamic inheritance law	Safeguarding the rights of heirs	Fulfillment of heirs' rights

4 Conclusion

The hybrid contract between shari'a insurance and waqf poses several risks, but these risks have not met the conditions that make the act should be prohibited. The principle of saddu al-dzari'ah should not be used excessively according to many good potentials in the waqf of insurance benefits and investment benefits. In other words, it should not prioritize the risks that may arise by abandoning all its good because there is no purpose, intention, or impact in the waqf of insurance benefits or investment benefits that violate shari'a provisions.

The application of saddu al-dzari'ah in this contract can be seen from several factors (1) The object of waqf must already be owned. In the waqf of insurance benefits, the waqf contract is only carried out after the object of the waqf is fully the property of the heirs. Therefore, the appointed heirs (as beneficiaries) must pledge (wa'd mulzam) later. The

promise is not included in the pillars that can cancel the insurance benefit waqf contract but needs to be implemented so that the heir's commitment remains awake and has the force of law. (2) The maximum percentage for the total insurance benefits represented is 45%. It is determined so that the percentage of advice related to the event or risk insured must exceed the nominal percentage that can be represented. The maximum limit of the proportion of waqf may not be set, but this will harm one of the parties, namely the shari'a insurance company. Moreover, the basis of the activities in this contract is insurance, so there needs to be a determination of the maximum proportion that can be waived. (3) The maximum amount of investment funds that can be waived following the will law in Islam is 1/3 part of the total investment benefit. Shari'a insurance companies (with the agreement of insurance participants) may take profits from investment activities periodically and be allocated directly for waqf. However, to fulfil the rights of the heirs, the investment benefits are accumulated, and the heirs still get a share after deducting 1/3 part of the total investment benefits. It can be concluded that the implementation of saddu dzari'ah is very concerned with applying waqf insurance benefits and investment benefits in Indonesia. The potential fears of the merger of waqf and insurance contracts are immediately blocked (saddu) and concocted as a provision in the Fatwa of the Indonesian Ulema Council (MUI), which all parties must obey.

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